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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,184	04/08/2004	William Ray Higgins	2290.006	1766
21917 7590 05/14/2008 MCHALE & SLAVIN, P.A. 2855 PGA BLVD PALM BEACH GARDENS, FL 33410			EXAMINER GILBERT, WILLIAM V	
			ART UNIT 3635	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/822,184	Applicant(s) HIGGINS, WILLIAM RAY	
	Examiner William V. Gilbert	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/03/05, 1/18/08</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is a Final Office Action. Claims 1-7 are pending.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (U.S. Patent No. 4,519,657) in view of Greene (U.S. Patent No. 6,284,336).

Claim 1: Jensen discloses a deformation resistant power pedestal assembly comprising a hollow rectangular post (Fig 16) having load bearing walls (65) defining exterior and interior surfaces and first and second open ends (proximate 81 and 62 respectively), a reinforcing cap (79) constructed for insertion within the first open end (proximate 81), the cap engages the interior surface of the post to prevent movement of the exterior surface, and retention means (proximate 81) arranged for retaining the cap within the post. Jensen discloses that the body (65) may be made of polyester or fiberglass resin (Col. 3, lines 57-63), but it does not disclose the body is polyester cloth with fiberglass resin. Greene discloses a post made of polyester cloth with fiberglass resin (Col. 3, lines 28-35). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to make the post in Jensen in the manner of Greene because while Jensen discloses the body is made of polyester or fiberglass resin, a polyester cloth would aid in ease of production of manufacturing the pedestal by aiding the maintaining of its shape and the fiberglass resin would be an obvious bonding agent for the cloth. Further Jensen does not disclose the load bearing limitation. It would have been obvious at the time the invention was made to a person having ordinary skill in the art

as a matter of design choice to design the post in Jensen to hold 18 times the weight of the assembly in order to function properly without failure and the prior art of record is capable of being designed to meet these limitations.

Claim 2: the cap (Jensen 79) provides closure to the first open end.

Claim 4: Jensen has a mounting surface extender (Fig. 15: 56) having a first and second surface, the first surface is removable (see 56) and the second surface (the other side) is arranged to provide increased surface area.

Claim 5: Jensen in view of Greene has an additive to provide resistance of ultraviolet radiation (Greene, Col 3, lines 30-34)

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen and Greene and further in view of Zemon (U.S. Patent No. 5,603,389).

Claim 3: Jensen in view of Greene disclose the claimed invention except for a plurality of fasteners to fasten the cap. Zemon discloses a post with a cap (Fig. 1) and fasteners (46) to hold the cap in place. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use fasteners with the pedestal and cap in Jensen in view

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of Greene in order to more permanently affix the cap to the pedestal.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen in view of Greene further in view of Fawley (U.S. Publication 2002/0095905).

Claim 6: Jensen in view of Greene discloses the claimed invention except that the polyester resin is not an isophthalic polyester resin. Fawley discloses a shaft made of isophthalic polyester resin (Paragraph 0034, lines 7-10). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use isophthalic polyester resin with the invention in Greene because the polyester used in Greene is inclusive of the isophthalic polyester resin in Fawley. Further, it is well known in the art that isophthalic polyester resin typically has higher tensile and compressive strengths versus non-isophthalic polyester resins. While the Examiner agrees with the disclosure noted by the Applicant in the Fawley reference (cited above) regarding the percentage of glass by weight, the Examiner respectfully notes that Applicant claims the limitation as follows: from **about** 56.6% to **about** 61% glass by weight (Claim 6). The Fawley reference discloses a mix (paragraph 0039) of **about** 70%. The Examiner respectfully

contends that the use of the limitation "about" provides flexibility and the Fawley reference can overlap the Applicant's limitation. See M.P.E.P. §2173.05(b).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jensen (U.S. Patent No. 4,519,657) in view of Greene (U.S. Patent No. 6,284,336) and Jordan (U.S. Patent No. 6,422,783).

Claim 7: Jensen discloses a process by providing a pedestal assembly a hollow rectangular post (Fig 16) having load bearing walls (65) defining exterior and interior surfaces and first and second open ends (proximate 81 and 62 respectively), a reinforcing cap (79) constructed for insertion within the first open end (proximate 81), the cap engages the interior surface of the post to prevent movement of the exterior surface, and retention means (proximate 81) arranged for retaining the cap within the post, and attaching at least one appurtenant structure (Fig. 15: 56) via through-bolts. Jensen discloses that the body (65) may be made of polyester or fiberglass resin (Col. 3, lines 57-63), but it does not disclose the body is polyester cloth with fiberglass resin. Greene discloses a post made of polyester cloth with fiberglass resin (Col. 3, lines 28-35). It would have been obvious at the time the invention was

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made to a person having ordinary skill in the art to make the post in Jensen in the manner of Greene because while Jensen discloses the body is made of polyester or fiberglass resin, a polyester cloth would aid in ease of production of manufacturing the pedestal by aiding the maintaining of its shape and the fiberglass resin would be an obvious bonding agent for the cloth. Further Jensen does not disclose the load bearing limitation. It would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to design the post in Jensen to hold 18 times the weight of the assembly in order to function properly without failure, and the prior art of record is capable of being designed to meet these limitations. Lastly, Jensen does not disclose placing the pedestal in the ground, though Jensen does have a frangible base (Col. 2, lines 49-62). Jordan discloses a post (Fig. 1-A) with a frangible base (27, 37) that has an extension into the ground (25). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to use the frangible mechanism in Jordan with the post in Jensen in order to anchor the system better with the ground, and one of ordinary skill in the art would implant the pedestal in the ground at the depth range as claimed in order for the pedestal to remain upright.

Response to Arguments

2. The following addresses Applicant's response dated 18 January 2008:

Applicant's arguments filed 18 January 2008 have been fully considered but they are not persuasive.

Regarding the rejection of Claims 1 under the Jensen in view of the Greene reference (cited above), the examiner agrees that the Greene reference is for a solid pole and this portion provides for most of the strength of the Green reference. The examiner, however, reasserts that he was not stating that the polyester cloth in the Greene reference by itself would support the unit in the Jensen reference, but merely that the cloth used in Greene is a functional equivalent to the polyester and fiberglass reinforced synthetic resin used in Jensen (Col. 3, lines 57-62) and could be used to make the apparatus in Jensen to meet the required loads. In short, one of ordinary skill in the art can use the cloth in Greene to make the system in Jensen. It is also noted that applicant argued that the Greene reference does not disclose a "rectangular post". The primary

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reference of Jensen, however does disclose such a shape, so the shape of the Greene reference was not considered. For the purpose of advancing prosecution of the application, however, it would have been obvious at the time the invention was made to a person having ordinary skill in the art as a matter of design choice to have this limitation because a configuration of an invention is a matter of choice that a person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed subject matter was significant. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). See MPEP §2144.04.

Further, the limitation that the Applicant's invention holds 18 times the weight of the assembly to function properly (page 9 or Remarks) is a matter of design choice. Inasmuch as the Applicant's invention is capable of sustaining such a load, so is the prior art of record capable of being designed to hold such a load by one of ordinary skill in the art. One would clearly design an apparatus so that it would not ail.

Applicant's argument with respect to the rejection of Claim 3 is not persuasive. The Examiner respectfully notes that according to Applicant's arguments (page 11), Zemon does not

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supply the deficiencies as proposed in Jenson in view of Greene. The Zemon reference is used only to provide a type of fastener, which is well known in the art and one of ordinary skill in the art could use the fastener in Zemon to more permanently affix a cap to a container.

Applicant's argument with respect to Claim 6 is not persuasive (page 11). While the Examiner agrees with the disclosure noted by the Applicant in the Fawley reference (cited above) regarding the percentage of glass by weight, the Examiner respectfully argues that Applicant claims the limitation as follows: from **about** 56.6% to **about** 61% glass by weight (Claim 6). The Fawley reference discloses a mix (paragraph 0039) of **about** 70%. The Examiner respectfully contends that the use of the limitation "about" provides flexibility and the Fawley reference can overlap the Applicant's limitation. See M.P.E.P. §2173.05(b).

Applicant's argument with respect to claim 7 are not persuasive. Applicant argues that the claimed depth of the pedestal's insertion into the ground satisfies building code requirements. The examiner respectfully argues that the rationale of satisfying building code requirements is well

within the level of ordinary skill in the art at the time the invention was made to design a structure to satisfy a building code because if a structure does not satisfy the requirements, it may not be usable.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William

V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./
Examiner, Art Unit 3635
/Basil Katcheves/
Primary Examiner, Art Unit 3635